

# FEDERAL UTILITY PARTNERSHIP WORKING GROUP SEMINAR

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## Exemption from Certified Cost & Pricing Fair & Reasonable Pricing/Competition

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Hosted by:



# UTILITY SERVICES

- Utility companies are generally regarded as **commercial entities that provide a reliable source of energy to their customers.**
  - This includes utility includes programs and incentives to help its customers manage and reduce their energy consumption; and ECMs are commercially available equipment.

UESCs meet the definition in FAR Part 2.101 for ***commercial items and services so they are exempt from the requirement for certified cost & pricing data.***

# GENERAL SERVICES ADMINISTRATION

- General Services Administration (GSA) is authorized by 40 U.S.C.501, to prescribe policies and methods governing the acquisition and supply of utility services for Federal agencies.
- FAR Part 41 provides guidance on the acquisition of utility services.
- Areawide contracts provide a pre-established contractual vehicle for ordering utility services under the conditions in paragraph (c)(1) of this section.
- The Areawide Contract defines “energy management services”

# EXCEPTIONS TO REQUIREMENT FOR CERTIFIED COST & PRICING DATA

- FAR 15.403-1: The contracting officer shall not require certified cost or pricing data to support any acquisition of an item that meets the commercial item definition (but may require data other than certified cost or pricing data as defined in FAR 2.101 to support a determination of a fair and reasonable price or cost realism)— See 10 U.S.C. 2306a and 41 U.S.C. Chapter 35.
- Competitive procedures shall be used in soliciting offers from ESCOs, lenders, and subcontractors (both for installation services and for materials/equipment). Provide full transparency to the Contracting Officer.
- When only one response to the Utility/ESCO request for subcontractor proposal is received, even if several solicited, there is no competition. Additional detail must then be provided to substantiate fair and reasonable pricing (i.e., labor and material costs, overhead rates, mark-ups and profit).
- Generally, competition means two or more responsible (e.g., not debarred or suspended, etc.) offerors, competing independently, submit priced offers that satisfy the contract requirement. Obviously, the greater the number of offers received, the greater the competition and ideally, the better the pricing.

# PRICE ANALYSIS

- Use price analysis methods to evaluate the proposal including prices proposed for each ECM (subcontractor pricing).
- May compare pricing against independent government estimate, industry cost estimating handbooks, or third-party independent sources, such as an A&E firm.
- Catalog pricing - offered to the government at same rate as general public or discounted to the government – consider negotiating discounts.
- Consider comparison of pricing for same items that are available on GSA Federal Supply Schedules.

# PRICE ANALYSIS, continued

- Compare pricing for same/similar items procured by competitive means in another contract within a recent time period.
- Engineering rates proposed may be compared against a contract competitively awarded for A&E services.
- Have discussions with the Utility to understand the drivers of costs perceived as high – may be able to adjust scope or correct misconceptions.
- Request additional detailed pricing data as necessary to determine fair and reasonable pricing.

# FEMP / NREL RESOURCES

- Agencies may contact FEMP/NREL for assistance during the development of a UESC.
- Assist agencies as requested for discussion of contract language and technical/engineering evaluation.
- Review of proposed pricing for ECMs and/or proposed finance terms (rates, adders and costs associated with financing).
- Overview of UESC process with contracting and technical officials.